

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

18 Cr. 217 (KMW)

ALEXANDRU BURDUCEA,

Defendant.

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**SENTENCING MEMORANDUM ON BEHALF  
OF ALEX BURDUCEA**

On February 14, 2019, Dr. Alex Burducea pleaded guilty before Magistrate Judge Pitman to Count One of the instant Indictment, charging conspiring to receive kickbacks; this Court, thereafter, accepted his plea (January 28, 2019 plea agreement annexed as Exhibit A). He was the first defendant in this case to plead guilty. Since that time, all defendants, other than defendant Freedman, have followed suit.<sup>1</sup> With a total offense level of 23, and Criminal History Category of I, Dr. Burducea's Guidelines imprisonment range is 46 to 57 months. He is scheduled to be sentenced on December 9. Probation has recommended an 18-month sentence. For the numerous reasons that follow, we respectfully request that the Court impose a sentence of probation with appropriate conditions. We acknowledge that the suggested sentence represents a substantial variance from the Guidelines range, but for the many reasons that follow, we believe it is "sufficient, but not greater than necessary" to achieve the goals of sentencing. *See* 18 U.S.C. §3553(a).

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<sup>1</sup> Todd Schlifstein pleaded guilty June 26, 2019.  
Dialecti Voudouris pleaded guilty August 2, 2019.  
Jeffrey Goldstein pleaded guilty August 16, 2019.

**A. Offense conduct and guilty plea.**

Dr. Burducea has pleaded guilty to participating in a conspiracy to receive kickbacks from the pharmaceutical company Insys, in whose speaker's program he participated between December 2014 and June 2015, during which time he earned approximately \$68,000.<sup>2</sup> Dr. Burducea acknowledged in his guilty plea allocution that, although he believed the Insys speaker's program was legitimate when he joined the program, he soon understood it was not. As he explained,

Insys had little concern whether the dinners were attended by professionals, who are likely to prescribe Subsys. In some instances, we had the same person attended the dinners on multiple occasions. The dinners were often held in venues not conducive to the demonstration I was supposed to give, and in many cases I did not give the PowerPoint demonstration at all. It therefore become clear that I was being paid to induce me to write prescriptions for Subsys on behalf of my patients. Though -- although I only prescribed Subsys for patients I believe would benefit from it, I also understood that the speaker fees I [received were] being paid to me as an inducement to prescribe Subsys.

Plea Transcript at 17. Surely Dr. Burducea should have left the speaker's program immediately upon realizing the program was illegitimate, yet, regrettably, he stayed for a total of approximately seven months, receiving \$68,000 in speaker's fees, before voluntarily submitting a letter of resignation, on July 11, 2015. He knew his continuing involvement in the speaker's program was wrong and deeply regrets his conduct. It was, as we discuss below, entirely contrary to his personal values, the values he was raised with, and—albeit imperfectly—the values he has always sought to exemplify as a doctor, a son, a husband, a father, and a citizen.

After Dr. Burducea was indicted and thoroughly reviewed the charges, he quickly concluded that he wanted to accept responsibility and plead guilty. Although he was the first

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<sup>2</sup> The PSR states that Dr. Burducea participated in the speaker's program from December 2014 until June 2015. PSR ¶ 60. In fact, he was introduced to the program in September 2014, was trained in November, and commenced working for the program in December.

defendant in this case to do so, he would have pleaded even earlier than he did but his wife, Danielle, [REDACTED]; given his family circumstances, with two young very children at home, knowing the outcome of that investigation was critical to the timing of his plea. Eventually, and after substantial introspection and soul-searching by both Alex and Danielle,

[REDACTED]

[REDACTED] Dr.

Burducea also pleaded guilty. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Although both Dr. Burducea and Danielle have been tormented and grief stricken by the events they themselves set in motion, and although they live in fear of possible separation from their children, as well as Dr. Burducea's likely loss of his license to practice medicine, they know they have made the best decision for themselves and their children. Further, Dr. Burducea believes, and wishes to publicly acknowledge, that he has been treated fairly by the Government during this difficult process.

**B. Personal and family circumstances.**

The PSR relates the basic facts regarding Dr. Burducea's personal history: He was born in Romania. His family was politically oppressed because his father opposed Nicolae Ceausescu's brutal Communist regime. Dr. Burducea personally, like countless others Rumanians associated

with dissent, encountered state-sponsored retaliation propagated, as was common place,<sup>3</sup> by a host of actors including even private citizens. Eventually, with the collapse of the regime, the family reunited and immigrated to the United States when Alex and his identical twin brother, Aristide, were 16 years old. PSR ¶ 104-106.

Through their parents' encouragement, coupled with their own extraordinary drive and ambition, both Alex and Aristide became doctors specializing in osteopathy. Alex is board certified in pain management and anesthesiology.

Following graduation, Dr. Burducea held a series of jobs, and he has won numerous awards for the extraordinary care he provides to his patients. PSR ¶ 127.

As the letters referenced in Section D reflect, Dr. Burducea is a unique doctor, obsessive in his devotion to his patients, willing to take on and stay with the most difficult cases that other doctors reject, and known for his attention to detail and follow-up. Yet it may be that the same characteristics and personality traits that drive him to extremes on behalf of his patients [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> Elad Vaida, *How Ceausescu's Secret Police Still Influence Romania Today*, Victims of Communism Memorial Foundation (May 15, 2018), <https://www.victimsofcommunism.org/witnessblog/2018/5/14/ceausescus-secret-police> ("The Securitate's informer network was enormous, totaling 750,000 in a country of only 23 million, meaning that three percent of the population consisted of informers[.]")

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Their situation became particularly dire after Dr. Burducea was indicted, was fired from his job, and lost the family's health insurance. There remains a \$60,000 hospital balance (among many other debts) that the family has not yet been able to pay, though they are committed to doing so, from [REDACTED]. Notwithstanding this case, Dr. Burducea's reputation as a respected and consummate professional enabled him to obtain temporary and part-time work as an anesthesiologist, but does not make sufficient income to fully support the family. Danielle, however, has been essentially unemployable, despite having applied for more than 100 positions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Alex Burducea: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:

1. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] Dr. Burducea reports that he and Danielle worry nonstop about their two sons, who are one and three years old, respectively. [REDACTED]

[REDACTED].

Dr. Burducea feels fortunate for the financial help he and Danielle have received from his father and brother. His acceptance of their generosity, however, has been difficult for him insofar as it has also caused him to encounter additional debt totaling some \$100,000.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED].

On February 26, 2019, the day before Alex was to have his PSR interview, [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

In an attempt to ease their financial burdens, the Burduceas put their home on the market, but they have not been able to sell it.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Guidelines Calculation.** Dr. Burducea's adjusted offense level under the Guidelines is 23, driven largely by the value to Insys of the Subsys prescriptions he wrote while a member of the speaker's program. We agree that this is the appropriate Guideline under the law, although we also provide the Court in the accompanying footnote<sup>4</sup> the Guidelines calculation pursuant to the

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<sup>4</sup> Under the alternate guidelines provided by the American Bar Association (viewable at [https://www.americanbar.org/content/dam/aba/publications/criminaljustice/economic\\_crimes.pdf](https://www.americanbar.org/content/dam/aba/publications/criminaljustice/economic_crimes.pdf)), we believe Dr. Burducea's offense level would be calculated as follows:

Base offense level:	8
Adjustment for value of improper Benefit (\$1,233,039):	8
Culpability adjustment: (moderate)	0
Victim impact (minimal):	<u>0</u>
	16
Timely plea	<u>- 3</u>
Adjusted offense level	13 (12-18 months)



American Bar Association’s Criminal Justice Section Task Force on The Reform of Federal Sentencing for Economic Crimes, resulting in a final offense level of 13 (12-18 months).<sup>5</sup>

Although we agree that the Guidelines have been accurately calculated we also believe, however, that this calculation is anomalous in certain respects and overstates Dr. Burducea’s culpability. For example, Dr. Burducea’s total fees for participating in the speaker’s program were \$68,400, an amount that, divorced of Insys’s profit, would have resulted in a Guideline offense level of 15 (18-24 months), not 23.<sup>6</sup>

Additionally, all of Dr. Burducea’s prescriptions were on behalf of patients he believed would benefit from Subsys because they suffered from severe break-through pain, whether that pain was cancer-related or otherwise. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>5</sup> See also Mehler, Gleeson, James & Cooley, *Federal Criminal Practice: A Second Circuit Handbook* § 42–11 at 836 (19<sup>th</sup> ed. 2019) quoting *United States v. Algahaim*, 842 F.3d 796, 800 (2d Cir. 2016) (In discussing the ABA proposal, which followed the authors’ acknowledging the criticism the “loss-driven guideline” has received as being “excessively punitive and as failing to adequately consider the factors that bear on the actual culpability of defendants convicted of fraud[,]” the authors went on to explain: “After the [Sentencing] Commission rejected the [ABA] proposal, the Second Circuit invited sentencing judges to impose non-Guidelines sentences based on a policy disagreement with the guideline itself whenever the loss computation has a ‘significant effect’ on the advisory range.”).

<sup>6</sup> We note that the Government, through its settlement with Insys, is to receive \$225 million to resolve the pending civil and criminal investigations. See, “Bankrupt Insys Reaches Deal to Divvy Cash Among Opioid Victims,” (New York Times, November 21, 2019. (<https://www.nytimes.com/reuters/2019/11/21/us/21reuters-insys-opioids-bankruptcy.html>)).

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**D. Letters of support.**

Notwithstanding his many personal difficulties, Dr. Burducea is an extraordinarily talented and empathetic doctor who treats his patients as individuals. Indeed, he spends whatever time is necessary to fully understand their needs, does not shy from difficult cases, and truly lives and works by both the Golden Rule and the Hippocratic Oath. And so, although he is justifiably proud of his success as a student, the awards he has won, and his skills as a doctor, by far he derives the greatest professional satisfaction from his interactions with his patients and his ability to help them through some of their most difficult life struggles, which, of course, includes dealing with seemingly intolerable and unrelenting pain. The letters we have received from Dr. Burducea's patients and colleagues are exceptional. They are collected, alphabetically, in Exhibit E.<sup>7</sup> Excerpts from just a few of the dozens of letters we have received will provide the Court with a sense of what Dr. Burducea does day-by-day and why both his attitude and approach makes him special, if not unique.<sup>8</sup>

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<sup>7</sup> We have collected in Exhibit E the most helpful of those letters, but note that we would have had, quite literally, dozens more but for the fact that we at some point put out the word that no more letters were needed.

<sup>8</sup> We wanted to share with the Court an email from a former patient received by Dr. Burducea, which he told undersigned counsel "breaks my heart" (which we relate without spelling/grammatical corrections):

Hi Dr. B. I still in pain. did not get any injections to my knee since you been treating me. You sure you do not take my insurance now. Or are you not working in your choosen profession? Are you in jail?. Did I do anything to you that you do not want me as your patient anymore? Ever since you I have been given and receiving poor service from doctors even the doctor you referred me to. I got to the office. the receptionist say my appointment was canceled. I am in a lot of pain. I care my adjuster she said no prior approval needed. I am tired. I need you as my doctor again

- [REDACTED]  
[REDACTED].

The day I met Alex I knew he was a special doctor the way he took his time to introduce himself and answer my questions and worries about the procedure.... I have seen dozens of doctors since my disease struck me down and Alex is far and apart the best of the best.... I was so impressed with Alex, I had my wife see him as a patient also due to her spinal cord injuries and the pain she suffers with ... My neurologist had me on high doses of narcotic pain meds since the beginning of my Neuro Sarcoidosis in 2007 and during one of my wife's appointments with Alex I mentioned to him I would like to get off these pain medications. Well that afternoon he called a doctor who specializes in helping patients get off opioids and got me an appointment with Dr. David Roufaiel here on Long Island. Most doctors would just hand you the number and let you deal with it yourself. Alex takes a personal interest in his patient's wellbeing and that's why he's so special ... Alex became more than a doctor as we spoke and got to know each other, I realized this was a special human being as I like to say Salt of the Earth which has led to a wonderful friendship between Alex and his wife Danielle together with my wife and me. We all have busy lives but try to call text every couple of weeks and dinner together every couple of months.

- **Minister Nathifa A. Clark, self-identified as “Friend, Confidante, and most of all Sister.”**

I met Alex (Dr. Burducea) back in 2006, when he started out his Anesthesia/Pain fellowship at the Mt. Sinai Hospital. I was a newly hired Medical Assistant back then, and my duties involved working directly with the fellows.... He was trusted by the Attending Physicians to carry out patient care with the utmost of care and compassion. He later went on to become one of the Attending Doctors on staff and I was assigned to work a lot more closely with him daily. This is where our friendship began to build as we would work together to ensure that our patients were always well managed. His patients loved him and trusted him dearly.... He was there to offer support to me during some of the hardest times in my life and would always make sure that I was able to stay strong no matter what I was facing. I am a Minister in the Church of The Lord and his support in my faith walk was and is always encouraged. He trusted my faith walk and would at times look to me for prayers of encouragement and advice whenever he felt he needed upliftment in his personal and professional life. There aren't many doctors that trust in a higher power and recognize that their gifts and talents are a blessing from this higher power, but Alex has grown to recognize and accept this blessing after the many talks we have had. My children adore him and call him Uncle Alex, as he has truly become a brother to me. We would always joke around with each other when I would say to him that he's my brother from another mother, and he would in turn say that I'm his sister from another mister. Who would have ever thought a friendship of this magnitude would be the outcome of a routine work encounter? His children are his world and his love for them is amazing to witness.... I love Alex dearly and cannot begin to think what my life would be without him being a part of it.... I truly thank you in advance for considering these heartfelt words, as every word that was written produced tears of both joy and sadness that just cannot seem to stop flowing.

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I am writing to you in support of Dr. Burducea, who is not only an excellent physician but also a compassionate, dedicated individual that changed my life for the better.... I had the misfortune of suffering an ankle sprain when I was 17 years old that led to my diagnosis of Complex Regional Pain Syndrome (CRPS), a condition that causes excruciating, unrelenting nerve pain (higher than childbirth, cancer, and amputation on the pain scale). I am a very exacting, unique case, but Dr. Burducea was always up to the challenge. I have many additional diagnoses, and due to their rare nature I have had a very difficult time finding doctors willing to accept me as their patient and provide continuing care. Often times, I am referred from one doctor to the next because of the complexity of my case. I have probably seen well over 100 different doctors for my condition, so I have seen the good and the bad, and the fact that I saw Dr. Burducea for 7 years, traveling upwards of 3 hours from out of state (Connecticut) is a testament to the amazing doctor he is.... What set Dr. Burducea apart from other doctors was that after learning my case didn't fit a textbook definition, he was still willing, and in fact enthusiastic, to provide me care, strategize, and problem solve in order get to the root of my pain and other symptoms. My parents have stood by my side since I was injured, attending all of my appointments, and they have always held Dr. Burducea in high regard because they saw him treat me with such care and compassion. I have always trusted that he has my best interest in mind, and I truly feel that he cares for me as if I were a member of his own family.

Unfortunately, I developed violent spasms in my foot and ankle. They were very debilitating and had become so strong and frequent that I had to leave my job at [REDACTED] where I was a Research Assistant in a Pathology lab.... I needed to have my Achilles tendon lengthened but because of the ongoing spasms I wasn't able to have surgery for fear of reopening the incision and causing more damage if I were to have a spasm post-surgery. Thanks to Dr. Burducea's creative, original, and out-of-the-box thinking, he was able to insert electrical leads for a spinal cord stimulator (SCS) trial. Most doctors didn't want to implant a spinal stimulator given my age, as I was 24 at the time, however, I had exhausted all other options with the exception of a pain pump. He didn't want to implant a pain pump and have me rely on medication for the rest of my life, when a non-prescription alternative was available.... The trial with my SCS was amazing! Whenever I got a spasm, I would turn up my stimulator and the spasm would stop.... After getting the stimulator and having a way to quickly control my spasms, my orthopedic surgeon decided he would be able to operate on my Achilles tendon and fix the position of my foot.... After my ankle surgery, I was able to start weight bearing and walking at PT with assistive devices. Dr. Burducea set the wheels in motion for me to finally see some progress in physical therapy...

Dr. Burducea has always been an excellent listener, and he always went above and beyond the standard of care that I received from many other doctors. I feel most doctors rush through appointments, barely giving me time to get a complete medical history, but during my appointments with Dr. Burducea, I never felt rushed, and he always took the time to answer all of my questions and address all of my concerns.... I loved that Dr. Burducea let me be active in my own care.

- [REDACTED]

During a very tumultuous period in my life when my son was killed in a building explosion, Dr. Burducea displayed extreme levels of empathy and tender-heartedness, only a father could truly understand. Dr. Burducea has always made the effort to lend an ear each and every time I came into his office to discuss the emotional pains I have constantly experienced from my loss. Whenever I began to become emotionally vulnerable, he would devote extra time to give anecdotes of his life experiences with his children to empathize and relate to me. Behaviors like his is extraordinarily scarce in the medical field as well as in patient care. I have experienced a multitude of pains and injuries throughout my life and have seen more than a handful of doctors in attempts to minimize or manage the extreme pains that I experience. Through the years of experiencing and meeting with doctor after doctor, Dr. Burducea has been the only doctor that has made me feel comfortable and respected as a man and human being. It is an honor to be a patient of Dr. Burducea and I believe that there is no other doctor like him.

- **Ernie Tejada, Director of Nursing.**

Alex and I met 3 years ago at Bergenfield Surgical Center where I was employed as Director of Nursing. In the time we spent working together at this location, I have witnessed an exceptional personal character which I have myself looked up to as inspiration. One day during my first days in my role as director, I noticed Alex in the staff lounge area laughing, telling jokes and stories, while eating with the staff. This is something you rarely see among doctors, this is when I first witnessed his humility and kind nature.

This respect that he propagates extends remarkably to his patients as well. I have been fortunate to see the incredible work that Alex has done for his patients and family members, he continues to improve tirelessly because it is what he loves. He serves mostly underprivileged patients with serious medical ailments as well as social and domestic issues. He does not limit himself to just the medical issues, but tries to help in any way he can and that to me shows real integrity....

I also have had the chance to meet his beautiful family and you feel with them the same energy you get from Alex. You see it in his older son by the way he treats his younger brother. You see it in his wife by the unwavering support she lends her husband. Alex has out poured his positive ways unto his family first and then to his community as all humans should be. We have become close friends and speak at least once a week, he is one of the few people that quickly picks up or at least always returns my calls and he is a doctor. I would like to see my friend and role model continue to do that for his family and our patients for many years to come.

- [REDACTED].

I remember talking to him about living with pain for the rest of my life- I did not want to go through life that way. I remember during our first meeting, I got up abruptly and left his office while he excused himself to the restroom.... he chased me to the elevator and made

me go back to his office. We sat and talked for a while, he gave me hope. Dr. Burducea explained to me that life has its ups and downs, and we should make the best of it, at whatever cost. I would look forward to my appointments because he gave me inspiration. I believe him to not only be a very caring and compassionate doctor, but a person as well. Dr. Burducea proved to care for my mental well-being, as well as my physical. I would recommend patients to him and they would thank me. When he announced that he was leaving Mt. Sinai, I felt like the hospital had lost an outstanding doctor, but I wished him well. Thanks to him, I am still here.

- **Dannielle Burducea**

Last, but surely not least, Alex's wife, Danielle Burducea, has written to the Court, explaining as best she can the extraordinary stress that has been brought to bear on herself and Alex, but the continuing love and support they give one another and her deep sense of appreciation for Alex and what he means to their family. She writes:

I am writing to you in regard to my husband, Alex Burducea. Over the last two years life has been incredibly difficult for our family. In addition to the multiple [REDACTED] financial struggles we have been faced with, we also both live with guilt for the mistakes made but do not regret our decisions to take responsibility for those mistakes. I have seen first-hand the tremendous stress and torment Alex has endured. One thing I have found remarkable about Alex during this dark time is that no matter what he is confronted with, his good heart always finds a way to shine through and he makes it clear each day the unshakable love he has of our sons that keeps him going.

It brings tears to my eyes to write this letter as it is beyond difficult to think back about what has happened over the last few years. Through it all Alex has tried to remain strong for all of us even though he was constantly worried and struggled daily to try to secure work. No matter how exhausted he was, Alex always made it a priority to bond with his boys. He has a very strong connection with them which even at such a young age is evident by the amount of times throughout the day they ask for "daddy". Alex wakes very early each morning to go to work but always makes sure to leave time to warm our one year old's morning milk & feed him (even if it means Alex sometimes doesn't have time to eat breakfast himself). At the end of the day, Alex comes straight home to spend time with us, whether it's taking the boys to the park, doing crafts with them or taking them for a walk around the neighborhood. It has been incredibly tough with [REDACTED] but have been able to find comfort in the fact that the boys have had their father there to care for them. Our boys, [REDACTED], and I are completely dependent on Alex as the sole provider for our family which has left us also devastated with fear worrying about what will happen to us without him.

Alex and I have gone through some hard times in the past year. The stress of the case and all the challenges it has brought with it has understandably affected our every day lives. We are, however, committed to one another and to our relationship. We are together and we are doing our level best to figure out our future together. I know that we have made mistakes, however, I can say without hesitation that Alex is a good man, an excellent doctor who is so committed to his profession and an amazing family man. The fact that he will likely lose his profession which he spent so much of his life cultivating along with the prospect of being away from us is a devastating punishment in and of itself. I can only ask that you consider these facts and circumstances and find it appropriate to send Alex home to us. The road ahead will be so difficult and we truly need to travel it together.

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**F. Current Employment**

Dr. Burducea is board certified in both pain management and anesthesiology. Although his practice prior to this case, for the last several years, had focused primarily on pain management, he has refocused his practice to anesthesiology in consideration of the pretrial release conditions regarding prescribing TIRF medication. This transition was, at first, difficult as he needed to quickly find work in an area he had not recently practiced in order to support his family. Fortunately, he has met with a fair degree of success finding part-time employment as an anesthesiologist, and has put together an array of jobs that has permitted him, albeit with some difficulty, to keep his family financially afloat, with additional financial assistance from his father and brother. Although he has told all employers of his current circumstances, they nonetheless have embraced him, because he is respected both for his personal integrity and for his skills as a physician. Notwithstanding the extraordinary pressures he has been under, he finds that in the operating room he is totally calm and in control.

**G. Sentencing Recommendation**

At the beginning of this letter, we noted the recommendation of the Probation Department that Dr. Burducea be sentenced to 18 months as well as our recommendation that Dr. Burducea be sentenced to probation; and now we respectfully explain our reasoning for that recommendation.

First, however, we emphasize that in making this recommendation we in no way minimize Dr. Burducea's offense conduct: At the time of the conduct he was enjoying a privileged life, making an excellent salary, living very comfortably with his wife and young family. He did not need to participate in Insys' speaker's bureau to support himself. Moreover, even if he entered the speaker's bureau with pure intentions, he knew soon enough that it was fraudulent, and he should have immediately extricated himself from it. Instead, he remained in the speaker's bureau for several months, and his prescriptions of Subsys markedly increased during his participation. He may have believed that the patients for whom he prescribed Subsys would benefit from it – and we submit he did believe this<sup>9</sup> – but there were other medications that are also considered efficacious for breakthrough pain and it is improper for a doctor to choose one such medication over another because its manufacturer is paying him or her. Additionally, Subsys is not just any drug, it is a form of Fentanyl which, as the entire country knows at this point, can be a remarkable source of relief but also an extraordinary source of abuse. And so Dr. Burducea cannot, and does not, suggest that his transgression was minor or otherwise excusable.

And so, why do we recommend probation?

1. History and Characteristics. Of course, § 3553(a)(1) directs the Court to consider, *inter alia*, Dr. Burducea's "history and characteristics." We detail above Dr. Burducea's unrelenting dedication to his patients; his herculean efforts to address and overcome his own substantial [REDACTED] [REDACTED]

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<sup>9</sup> We do note that Dr. Burducea's offense was not aggravated by conduct that has been attributed to others, including inflammatory allegations of visits to strip clubs; of heavy drinking during speaker presentations; or of additional payments to doctors for various expenses unrelated to speaker fees, including additional meals, parties and even a non-existent security system, etc.

██████████; the needs of his family; and his early willingness to accept responsibility for his conduct, without reservation.

2. Discretionary Guidelines range. We respectfully suggest that the Final Offense Level in this case, 23 (46 to 57 months) vastly overstates Dr. Burducea's offense conduct, for which he was paid \$68,000 during the approximate seven months he participated in Insys's speaker's program. We suggest a more reasonable starting point for considering a variance is provided by the aforementioned ABA alternative Guidelines calculation (*see, supra*, n.4), which would result in a final offense level of 13, and a discretionary Guidelines range of 12-18 months. Likewise, if Dr. Burducea's Guidelines were calculated based on his own gain, rather than the benefit to Insys, his offense level under the U.S. Sentencing Guidelines would be reduced by 8 levels, to 15 (18 to 24 months).
3. Consideration for "breaking the logjam." Dr. Burducea was the first to plead guilty. Since then, all but one defendant have followed suit.
4. [REDACTED]

[REDACTED]

[REDACTED].

5. Consideration of extraordinary family circumstances. Because Danielle has been home with the children, and has been otherwise unable to obtain full-time employment due to the [REDACTED], Dr. Burducea is the sole provider for the family. He, fortunately, has been able to draw upon the financial resources of his family when needed, and he is grateful for that assistance. But this financial reliance has been taxing for both him and his family and cannot continue indefinitely. His presence at home is needed, not for just all the obvious reasons but also because his absence during these last several weeks has only made manifest what was otherwise obvious: It is exceedingly difficult for Danielle to care for her two young children herself. Moreover, in addition to profoundly impacting Danielle and the children's quality of life and emotional well-being, Dr. Burducea's absence from the home will exacerbate the family's already dire financial circumstances by depriving them of their only source of income. All these difficulties, of course, likely will continue unabated as [REDACTED].

6. Consideration of the series of unfortunate events that have befallen the family. As we detail in Section B of this memorandum, Alex and Danielle have experienced a torrent of calamities since the indictment was filed, including [REDACTED]

[REDACTED] inability to obtain a job, [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

On top of these problems, the family has lost its health insurance, has been under extreme financial stress, has tried unsuccessfully to sell their home to remove some of the financial stress, and has been required to supplement Dr. Burducea's income through loans from his father and brother, for which he is grateful, but which have put increasing pressure on him.

For all these reasons, we respectfully suggest that the Court grant a variance from the Guidelines and sentence Dr. Burducea to probation with whatever conditions the Court deems appropriate. Once such possible condition would be for Dr. Burducea to continue his efforts, begun during the past year – but which await the disposition of this case – to join the Army Reserves, which is in dire need, at VA hospitals, of doctors with his specialties. Attached as Exhibit F is the letter of SFC Chris Mahabir, explaining to the Court that the Army, fully aware of these charges, is anxious to approve Dr. Burducea's enlistment into the Army Reserves, to help alleviate the Army's dire need for doctors. We emphasize, and SFC Mahabir's letter also reflects, that Dr. Burducea's willingness to accept this responsibility stems from a very heartfelt desire to serve his country and, as reflected in the dozens of attached letters evidencing his deep dedication to patient care, is entirely consistent with his character.

In making our recommendation of probation, we appreciate this is a big “ask” and we do so fully cognizant that the requested disposition would be an outlier of sorts. However, we also believe that the facts merit it. Although it sometimes is said, not without justification, that the woes that befall a convicted defendant are of his own making and therefore should not inform the sentencing decision, this case is atypical in so many ways: Both Alex Burducea and Danielle Burducea have suffered an assortment of tragedies that is breathtaking in their sheer number, their severity, and their impact on their family, which presently includes two children [REDACTED]

\_\_\_\_\_ only

he, as a practical matter, can care for their two children, \_\_\_\_\_

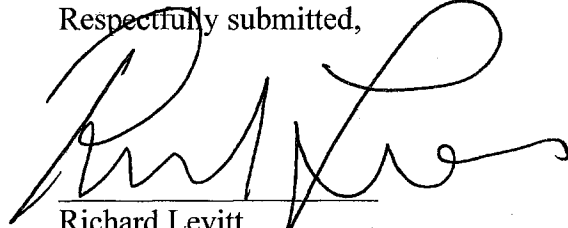
Dr. Burducea is the family's only breadwinner and has himself struggled mightily against the enumerable setbacks and demons that have befallen him. He loves Danielle without limit, as he loves his children. Life is complicated and theirs perhaps more so than usual. Dr. Burducea has been punished several times over for his wrongdoing – which resulted in payments to him of all of \$68,000 — and his incarceration will infinitely strain a family that is already under enormous pressure. As it is, Dr. Burducea will lose his license; will be working every minute he is able to, to support his family and then – when permitted – will return home to Danielle to take care of his children and give her some respite from her own inordinate pressures.

We recognize the need for sentences to reflect the severity of the underlying conduct and the need for general deterrence but respectfully offer that the suggested sentence, given everything else we know about the offense and the offender, is sufficient but not greater than necessary to meet the purposes of sentence; anyone aware of this case and knowing the biblical suffering Dr. Burducea and his family have endured as a result of his wrongdoing would be truly unreachable if he or she were not deterred by his story.

For all these reasons we ask the Court to impose a sentence of probation, with appropriate conditions.

Dated: November 22, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Richard Levitt', written over a horizontal line.

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